

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION,
CENTER FOR CONSTITUTIONAL RIGHTS,
PHYSICIANS FOR HUMAN RIGHTS,
VETERANS FOR COMMON SENSE, and
VETERANS FOR PEACE,

Plaintiffs,

v.

04 Civ. 4151 (AKH)

DEPARTMENT OF DEFENSE, AND ITS
COMPONENTS DEPARTMENT OF ARMY,
DEPARTMENT OF NAVY, DEPARTMENT OF
AIR FORCE, DEFENSE INTELLIGENCE
AGENCY; DEPARTMENT OF HOMELAND
SECURITY; DEPARTMENT OF JUSTICE,
AND ITS COMPONENTS CIVIL RIGHTS
DIVISION, CRIMINAL DIVISION,
OFFICE OF INFORMATION AND PRIVACY,
OFFICE OF INTELLIGENCE POLICY AND
REVIEW, FEDERAL BUREAU OF
INVESTIGATION; DEPARTMENT OF STATE;
and CENTRAL INTELLIGENCE AGENCY,

Defendants.

SECOND DECLARATION OF MARILYN A. DORN
INFORMATION REVIEW OFFICER
CENTRAL INTELLIGENCE AGENCY

I, MARILYN A. DORN, hereby declare and say:

1. I am the Information Review Officer (IRO) for the
Directorate of Operations (DO) of the Central Intelligence
Agency (CIA). This is the second declaration that I have
submitted in this case. My first declaration dated

15 October 2004 is incorporated herein by reference.

2. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

3. The purpose of this declaration is to describe to the Court the process by which the CIA has determined that certain records responsive to Plaintiffs' Freedom of Information Act (FOIA) request would be located in CIA operational files that the Director of Central Intelligence (DCI) has designated as exempt from search and review under the FOIA in accordance with the Central Intelligence Agency Information Act (Act), 50 U.S.C.A. § 431, as amended.

4. The Act provides that the DCI may exempt operational files of the CIA from the publication, disclosure, search and review provisions of the FOIA.¹ Shortly after enactment of the Act in 1984, the DCI designated categories of operational files as exempt. See *Notice of Operational File Exemptions*, 59 Fed. Reg. 40,339 (Aug. 8, 1994) (noting that shortly after the Act was enacted in 1984, the DCI designated categories of files as

¹ Although the Act was amended on 17 December 2004 to provide that the Director of the CIA shall coordinate with the Director of National Intelligence (DNI) in designating exempt operational files of the CIA, the position of DNI is not yet filled and, in any event, this amendment is not yet effective.

exempt operational files "pursuant to the criteria specified in the Act").

5. The Act further provides that not less than once every ten years, the DCI shall review the exemptions in force to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.² In 1995, the DCI completed the first decennial review of operational files designations and again designated the categories of exempt operational files. See Notice of Decennial Review of Operational Files Designations, 69 Fed. Reg. 76,449 (Dec. 21, 2004) (noting that the Agency completed its first decennial review exercise in March 1995). Among the categories of operational files that the DCI designated as exempt are the following categories of DO files: operational activity files; operational interest files; personality files; policy and management files; and operational files maintained and used within the DO but that remain outside and peripheral to the central file system. The DCI's 1995 designations of exempt operational

² Similarly, the Act was amended to provide that the Director of the CIA and the DNI shall conduct decennial reviews of operational files designations. As stated in note 1, this amendment also is not yet effective.

files are the designations of exemptions currently in force.³

6. In accordance with the Act, the DCI reviews operational files designations periodically, but not less than once every ten years. Accordingly, the DCI's operational files designations are not like the DCI's formal invocation of the state secrets privilege, which requires that the DCI assert the privilege on a case-by-case basis as it arises in each litigation.

7. I have reviewed Plaintiffs' FOIA request along with the DCI's 1995 designations of categories of operational files that are exempt from FOIA, and have determined that records responsive to the request would be located in the categories of DO operational files that the DCI has designated as exempt operational files. Therefore, I have determined that operational files located in these designated categories are exempt under FOIA from search and review for records responsive to Plaintiffs' request, until

³ On 21 December 2004, the CIA published a notice of its second decennial review of operational files designations. See *Notice of Decennial Review of Operational Files Designations*, 69 Fed. Reg. 76,449 (Dec. 21, 2004). The public comment period closed on 20 January 2005 and the CIA is in the process of reviewing the public comments and the operational files designations in accordance with the Act. Until the DCI completes his review and designates the categories of exempt operational files, the DCI's 1995 designations of exempt operational files are the designations of exemptions currently in force.

such time as an exception found in subsection (c) of the
Act applies.

* * * *

I hereby declare under penalty of perjury that the
foregoing is true and correct.

Executed this 16th day of February, 2005.



Marilyn A. Dorn
Information Review Officer
Central Intelligence Agency